

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

75-1216

To be argued by
ABRAHAM SOLOMON

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P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA

:

-v-

:

Docket No. 75-1216

BRUNILDA RODRIGUEZ,

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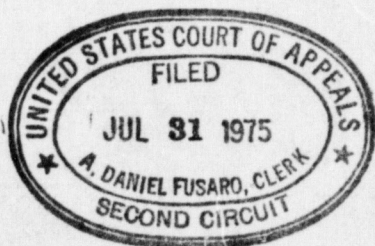
Appellant

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BRIEF FOR APPELLANT BRUNILDA RODRIGUEZ

On Appeal From a Judgment of
The United States District Court For
The Southern District of New York



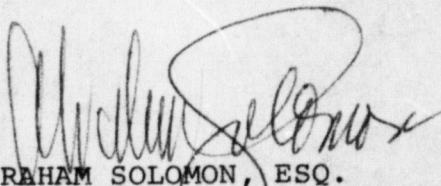

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TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	1
STATEMENT PURSUANT TO RULE 28(3)	
Preliminary Statement.....	2
Statement of Facts.....	2
Testimony for Government.....	4
CONCLUSION.....	15

TABLE OF CASES

	Page
Blumenthal v United States, 322 U.S. 539.....	13
Katteakos v United States, 328 U.S. 790.....	14
United States v Agueci, 310 F.2d 817.....	13
United States v Aviles, 274 F.2d 179.....	13
United States v Borelli, 336 F.2d 376-387.....	11,13
United States v Bufalino, 285 F.2d 408-417.....	12
United States v Calabro, 449 F.2d 885.....	13,14
United States v Catone, 426 F.2d 902.....	11
United States v Cirillo, 468 F.2d 1233.....	13
United States v Purin, 486 F.2d 1353.....	12
United States v Vega, 458 F.2d 1234.....	13

UNITED STATES COURT OF APPEALS
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-----X

UNITED STATES OF AMERICA :

-v- :

BRUNILDA RODRIGUEZ :

Appellant :

-----X

BRIEF FOR APPELLANT

QUESTIONS PRESENTED

1. There was no fair preponderance of evidence proving beyond a reasonable doubt that a single conspiracy existed and therefore as a matter of law a multiple conspiracy existed and the Court should have directed that the indictment against the appellant Brunilda Rodriguez be dismissed and appellant acquitted.
2. The government failed to established the existence of a single conspiracy.
3. The appellant was submerged and literally unindated under the mass of testimony and exhibits introduced in evidence, in the government's attempt to establish crimes committed under the first count with which the appellant was not concerned nor involved and probably caused the jury to believe that the evidence against other defendants, even those not on trial, supported the charges against appellant.
4. Even assuming, arguendo, appellant's total involvement herein, the transactions so testified to by the government's witness, e.g. show multiple conspiracies between Reyes and Rafy, and Reyes and Medina.

STATEMENT PURSUANT TO RULE 28(3)

Preliminary Statement

This is an appeal from a judgment of the United States District Court for the Southern District of New York, rendered May 8, 1975, after a jury trial, convicting appellant of a conspiracy, Count I to deal in the sale of heroin during the period June 1973 to about November 6, 1973, and also of the substantive charge of a sale in Count III thereof.

Statement of Facts

The original indictment named seven defendants and charged one (1) conspiracy count and eight substantive counts.

The conspiracy count charged all seven defendants with conspiracy to violate Sections 812- 841(a) (1) and 841(b) (a) of Title 21.

The second count charged the defendants Santiago Medina and Antonio Reyes with violating Schedule I on or about the 17th day of September 1973. Title 21 U.S. Code-Section 812- 841(a) (1) and 841(b) (1) (A) and Title 18 Section 2.

The third count charged Reyes, Rodriguez, Hector Soto, and Ricardo Quiles with a violation of Title 21 Section 812- 841(a) (1) 842(b) (1)A and Section 846 Title 18.

The fourth count charged Hector Soto and Victor Soto on or about October 16, 1973 with a violation of Title 21, Sections 812, 841(a) (1) and 841(b) (1) (A) and Section 27 Title 18.

The fifth count charged Hector Soto and Victor Soto with a violation of Section 812,841(a)(1) and 841(b)(1)(A) and Title 18 Section 2.

The sixth count charged the defendant Quiles with a violation on or about November 6, 1973, of Title 21, Section 812, 841(A)(1) and 841(b)(1)(a) and Title 18 Section 2.

The seventh count charged on or about November 6, 1973 Joseph Cacciola violated Title 21, Sections 812-841(a)(1) and 841(b)(1)(A).

The eighth count charged that on or about October 16, 1973 Victor Soto did unlawfully carry a firearm during the commission of a felony. Title 21- Section 812,841(a)(1) 841(b)(1)(A) and 846. Also Title 18 Section 924(c)(12).

The ninth count charged that on or about the 26th day of October 1973 Hector Soto did unlawfully carry a firearm during the commission of a felony. Title 21, Section 841(a)(1)- 841(b)(1)A- 846 and Title 18 Section 924(c)(2).

Only the 1st, 2nd and 3rd counts were submitted to the Jury for their consideration and only two defendants went to trial, to wit Victor Soto and Brunilda Rodriguez although evidence as to all defendants and all counts were admitted in evidence.

Testimony for Government

Angel Rodriquez, a New York City Detective assigned to the Federal Drug Enforcement Administration as an undercover investigator testified as follows: (S.M. 37)*

In the month of April 1973, pursuant to a telephone call, he went to the Federal Detention Center on West Street in New York City; there he spoke to one Louis Lopez, an inmate. Following said conversation and also in April 1973 Angel Rodriquez phoned the defendant Antonio Reyes and following a conversation with him they subsequently met. (S.M. 39)

Nothing further occurred until July 10th, 1973 when Angel Rodriquez phoned Reyes; they later met at his home. At this time Angel Rodriquez introduced himself as Angelo.** (S.M. 44) They conversed re the purchase~~d~~ and sale of narcotics. As a result of said conversation, Angelo, later that evening, returned to Reyes apartment and was introduced to a person named Rafy who produced a sample of heroin which Angelo took and paid \$20.00, \$10.00 of which went to Reyes. Reyes then took a piece of paper, wrote Rafy's telephone number and name and handed same to Angelo. (S.M. 46-47)

*All numerals are references to minutes of trial.

** Hereafter Angel Rodriquez will herein be designated as Angelo.

TON CONTENT

About seven or eight days later Angelo met Rafy at or near his place of employment to negotiate for a sale of heroin but was unable to conclude one. (S.M. 55). After this meeting Rafy was not seen again. From April 26, 1973 to July 1973 no contact was made by Angelo with Reyes. (S.M. 132)

In September Angelo called Reyes; they discussed narcotics and later, on September 17, 1973, met at Reyes apartment. Angelo was informed by Reyes that he had a connection who would sell an ounce of heroin for \$1300; but that Angelo would have to pay him \$100. (S.M. 56) While Angelo waited in the apartment there was a phone call. Reyes left and later returned with an individual known as "Indio", Reyes connection. It was later ascertained his name was Medina. (S.M. 55-56-57) Medina gave Angelo a sample and asked him to wait. Medina left; shortly thereafter he returned with an ounce of heroin. Angelo then gave Medina \$1300 and Reyes \$100. Medina then gave Reyes some money. Angelo asked Medina for his phone number, for future use. Medina told Angelo that he should contact Reyes when he wanted him. That is the last he saw of Medina. (S.M. 59-60)

Angelo testified that after this meeting on September 17th he never saw Mr. Medina again. (S.M. 61-62) The next time Angelo spoke to Reyes was October 1st, 1973 and informed him that Mr. Medina had been locked up for a sale, referring to selling

narcotics. Reyes then told Angelo he knew some people with a
connection. (S.M. 63-64) Following a conversation between
Reyes and Angelo on October 10th or October 11th Angelo met
Reyes and they went to his apartment. There they met Brunilda
Rodriguez who was introduced as Rocky. (S.M. 66)

They discussed the purchase and sale of narcotics.
Brunilda said her connection could get Angelo heroin for \$1600.
Brunilda left; sometime later Reyes returned and advised Angelo
that Rocky wasn't able to meet the connection. Angelo then
told Reyes to call whenever he was ready. A phone call came on
October 15th. (S.M.67) Angelo was informed by Reyes that the
connection was made, and for Angelo to come about three or
five o'clock and bring \$1800 with him. This Angelo did. (S.M.68)
Reyes left the apartment, came back later with Brunilda Rodriguez;
Angelo then told Brunilda to go and get the heroin. Brunilda
and Angelo left the building, (S.M.69) crossed the street, went
to a liquor store-came out of the store-crossed the street with
Brunilda and at this time three or four officers were running
after him with guns. There were several incidents as a result
of these police officers interference. (S.M.70-71-72). After
the conclusion of the above incidents, on the public highway,
Angelo, Brunilda and Reyes went to 240 West 175th street where
they met one Hector Soto; Brunilda introduced Soto as the con-
nection and told Soto that Angelo wanted to buy heroin. (S.M.73)

Hector agreed to sell Angelo a half-ounce of heroin with the commitment that Angelo would come back the next day and buy another half-ounce. Angelo agreed to this, then he, Brunilda and Hector Soto walked up to an apartment. They entered the bedroom area and inside the bedroom sitting on the bed was an individual, later identified as Ricardo Quiles. Hector reached into a desk drawer, pulled out a clear plastic bag containing heroin, gave it to Angelo for which Angelo paid him \$750. (S.M. 74) Hector then told Brunilda to carry the heroin down to Angelo's car. She did this; on the way to the car they met Reyes and Angelo gave him \$50. Brunilda asked for \$50 but Angelo told her he would give it to her in the future. They approached the car, Angelo opened the door and told Brunilda to put the heroin package in the ash tray which she did. (S.M. 75)

On the following day Angelo met Hector Soto and drove to 690 Garden Street-to Victor Soto's apartment. (S.M. 75) Later pursuant to instructions from Hector Soto they drove to Victor Soto's apartment entered it and were greeted by Victor Soto. Angelo then showed Hector Soto \$800. Victor Soto said "O'kay, I'll be back with the package." Victor Soto entered a bedroom area, came back with a clear plastic bag containing the heroin and a German Luger pistol in his right hand. He then put the gun in his waist. (S.M. 76) Angelo paid Victor Soto for

the heroin. Victor then escorted Angelo downstairs. (S.M. 82) On October 26, 1973 Angelo returned to Victor Soto's apartment, (S.M. 87) and at this time and place purchased two ounces of heroin and paid \$3000 for the same to Ricardo Quiles and Victor Soto. (S.M. 88)

Some time in November Angelo went to 690 Garden Street allegedly to buy two ounces of heroin, which he had previously ordered by phone. (S.M. 89-90) One Ricardo Quiles brought two ounces of heroin. Angelo asked and received a sample, left for the purpose of testing the same. He met with his surveillance agents and they concocted a plan which would lure the defendants out of the apartment. The plan was used and succeeded. (S.M.90) Ricardo Quiles left the apartment and was arrested as he drove away. Angelo then met Hector Soto, Victor Soto and his wife in the street. Hector Soto walked over to the car and at this (S.M.91) point they were arrested. On the evening of November 5, 1973 they arrested Reyes. (S.M. 92) They then walked across the street and placed Brunilda Rodriguez under arrest. (S.M. 93) This is substantially the direct evidence of purchase and sale.

The government also presented the testimony of Joseph Barbato a chemist employed by the Drug Enforcement Administration who testified to the analysis of the drugs seized by the government and that the drugs contained heroin. The government also

presented the testimony of Joseph Flannery, employed by the United States Department of Justice, the Drug Enforcement Administration as a special agent. (S.M. 167) He testified that he participated in surveillance in connection with an investigation of narcotics during the summer and fall of 1973. (S.M. 168) On November 6, 1973 he arrested Ricardo Quiles and Gregory Woods and seized 2 ounces of heroin from Quiles. (S.M. 184) He also participated in the arrest of Antonio Reyes and Brunilda Rodriquez. (S.M. 185) He further testified that he did not see the transfer of any drugs or money by or between Detective Rodriquez and any of the named defendants in this action. (S.M. 191-192) The government also presented the testimony of William Petraglia who was employed by the New York City Police department and assigned to the Organized Crime Control Bureau. (S.M. 203-204) On November 6, 1973 he took part in the arrest of Brunilda Rodriquez. (S.M. 204) He also testified "To the best of my recollection, Miss Rodriquez said that her part in it was that she introduced Angel, which is Detective Rodriquez, to a Hector Soto because Hector wanted to meet Angel to consummate a heroin deal." (S.M. 209-210) He also testified that on some occasions he acted in a surveillance capacity; while on foot- and others while in a vehicle. (S.M. 227) The Government rests. (S.M. 268)

At the close of the government's case, appellant Brunilda Rodriguez moved for a directed verdict of acquittal and for a dismissal of the indictment. (S.M. 268) The motion was denied (269) and the defendant rested. (S.M. 271)

The appellant offered no evidence but rested on the government's case and all motions were received and denied.

The sum and substance of the testimony is as follows:

1. From late April, 1973 to July 10, 1973 there were no conversations between Angel Rodriguez and Antonio Reyes.

2. On or about July 10th, 1973 there was a purchase from one Raly, of a sample of heroin, at Reyes home and no other buy.

3. On September 17, 1973 Angelo purchased heroin from Santiago Medina at Reyes apartment.

4. That after September 17th he never saw Medina again because Medina had been arrested.

5. On October 10th or 11th he met Brunilda Rodriguez at Reyes apartment.

6. No activities until about October 15, 1973- when a purchase was made from Hector Soto in his apartment.

7. The next day another purchase was made at Victor Soto's apartment.

8. On October 26, 1973 Angelo purchased two ounces of heroin from Ricardo Quiles and Victor Soto.

9. On or about November 6, 1973 the arrests were made.

Were the sales above set forth a part of one single conspiracy as charged or were they separate and distinct transactions and conspiracies.

The proof as I view it shows several conspiracies proven under an indictment which charged a single conspiracy. The proof of the Rafy (July 1973) transaction establishes that this was a single transaction; a one time deal between Rafy and Reyes.

The proof of the Medina transaction must be placed in the same category. Then there was this long hiatus prior to the Medina sale. This evidence surely was prejudicial to the defendant appellant. Then the testimony about the guns, certainly were damaging and prejudicial.

There was no fair preponderance of evidence proving beyond a reasonable doubt that a single conspiracy existed.

There must be evidence from which the conspiracy can be found beyond a reasonable doubt. United States v Borelli, 336 F.2d 376-387, United States v Catone, 426 F.2d 902.

The cases hold that a co-conspirator is responsible for all actions taken by his partners within a "scope" of the conspiracy. The evidence shows that appellant Brunilda made

introductions between Angelo and the supplier; that what she received was a paltry sum and some drugs for her personal use.

In United States v Purin, 486 F.2d 1353 the court held,

"that a mere willing participant in acts with alleged co-conspirators, knowing in a general way, that their intent was to break the law is insufficient to establish an individuals own participation in the conspiracy."

The appellant was submerged and literally inundated under the mass of testimony and exhibits introduced in evidence, in the government's attempt to establish crimes with which the appellant was not concerned and thus probably caused the jury to find that the evidence offered against the other defendants, plus the Medina and Rafy transactions supported the charges against the appellant.

"The danger of substituting a "feeling of collective culpability for a finding of individual guilt" as stated in United States v Bufalino, 285 F2d 408-417 had become a reality in the minds of the jury".

It is the writer's position on this appeal, that while generally the question of whether a multiple conspiracy exists is a factual questions for the jury to determine, this case here under consideration presents a situation where as a matter of law there was a multiple conspiracy, therefor the charge against

the appellant should have been dismissed.

It is clear, at the outset, that this is not a typical "chain conspiracy" as there is no division of labor ranging from the importation of drugs to its ultimate conclusion.

Blumenthal v United States, 322 U.S. 539

United States v Aviles, 274 F.2d 179

United States v Agueci, 310 F.2d 817

United States v Calabro, 449 F.2d 885

United States v Cirillo, 468 F.2d 1233

United States v Borelli, 336 F.2d 376

United States v Vega, 458 F.2d 1234

In contrast to the usual conspiracy case where separate groups of importers, wholesalers, middlemen and retailers are chained together in one cooperative venture, each contributing to the success of the whole, the evidence in this case clearly establishes multiple conspiracies.

It is clear from the evidence in this case the suppliers had nothing whatever to do with the activities of the others. In fact, it appears on this record that each supplier was interested only in promoting his own supply of drugs. They neither bought nor sold to each other; and each pursued his own interest without concern or contribution to the success of the others.

There was a total absence of proof that appellant had

any connection with Rafy and/or Medina. Each was a separate and distinct conspiracy. It was not established that the various suppliers had a common source of supply for their drugs.

The fact alone that the various groups (Reyes and Rafy) and (Reyes and Medina) were in the business is a wholly insufficient basis for claiming that this was a single conspiracy.

Katteakos v United States, 328 U.S. 790

Finally, it is important to note that the government failed to demonstrate any cohesive or an organized plan among the alleged co-conspirators. What the government did show were many isolated transactions occurring at different times. They did not prove the "continuous involvement with each other" that provided the common thread upon which the jury properly could find the single conspiracy as charged. United States v Calabro, 449 F.2d 885

Therefore the trial court should have found as a matter of law that a multiple conspiracy existed under the proof herein and should have granted the appellant's motion for a dismissal and a directed verdict of acquittal.

II

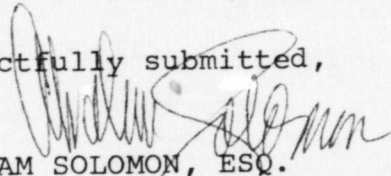
Pursuant to the Federal Rules of Appellate Procedure all relevant arguments in the brief filed by the co-appellant

are incorporated by reference.

CONCLUSION

FOR THE ABOVE STATED REASONS,
THE JUDGMENT BELOW MUST BE
REVERSED AND THE MOTION FOR A
DIRECTED VERDICT OF ACQUITTAL
BE GRANTED.

Respectfully submitted,


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